

CODE OF CONDUCT - COMMISSION BOARD MEMBERS AND EMPLOYEES

FOREWORD

The Criminal Cases Review Commission was established as a body corporate under the Criminal Appeal Act 1995 (the Act) from 1 January 1997. The Commission was established under the Act to investigate possible miscarriages of justice in the criminal courts of England, Wales and Northern Ireland, and in the Court Martial and the Service Civilian Court; and to refer appropriate cases to the relevant appeal court.

Provisions in relation to the composition, functions, powers and duties of the Commission are contained in sections 8 to 25 inclusive, and Schedule 1, of the Act.

This Code of Conduct (revised as of April 2016) sets out clearly and openly the standards expected of the Commission's board members and employees. This Code sits alongside a suite of Commission HR and corporate policies and documents.

Any questions on this Code should be directed to:

Chief Executive
Criminal Cases Review Commission
5 St Philip's Place
Birmingham
B3 2PW

CODE OF CONDUCT

COMMISSION BOARD MEMBERS AND EMPLOYEES

SECTION 1: INTRODUCTION

- 1 This Code of Conduct applies to all board members and employees unless otherwise stated. It is your responsibility to ensure that you are familiar with, and comply with, all the relevant provisions of this Code.

SECTION 2: KEY PRINCIPLES OF PUBLIC LIFE

- 2 The key principles upon which this Code is based are the Seven Principles of Public Life¹. These principles, set out below, should inform your actions and decisions:

Selflessness - You should take decisions solely in terms of the public interest. You should not do so in order to gain financial or other material benefits for yourself, your family or your friends.

Integrity - You should not place yourself under any financial or other obligation to outside individuals or organisations that might, or might be perceived to, influence you in the performance of your official duties.

Objectivity - In carrying out public business, including awarding contracts and recommending individuals for rewards and benefits, you should make choices on merit.

Accountability - You are accountable for your decisions and actions to the public and must submit yourself to whatever scrutiny is appropriate for your office.

Openness - You should be as open as possible about the decisions and actions that you take. You should give reasons for your decisions and restrict information only when the wider public interest clearly demands.

Honesty - You have a duty to declare any private interests relating to your public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership - You should promote and support these principles by leadership and example.

¹ *Standards in Public Life: First Report of the Committee on Standards in Public Life*. Volume 1: Report. CM 2850-I

SECTION 3: GENERAL CONDUCT

Use of Public Funds

- 3 You have a duty to ensure the safeguarding of public funds² and the proper custody of assets which have been publicly funded. You must carry out your fiduciary obligations responsibly – that is, take appropriate measures to ensure that the Commission uses resources efficiently, economically and effectively, avoiding waste and extravagance. It will always be an improper use of public funds for public bodies to employ consultants or other companies to lobby Parliament, Government or political parties.

Allowances

- 4 You must comply with the rules set by the Commission regarding remuneration, allowances and expenses. It is your responsibility to ensure compliance with all relevant HM Revenue and Customs' requirements concerning payments, including expenses.

Gifts and Hospitality

- 5 You must comply with the rules set by the Commission on the acceptance of gifts and hospitality (Annex One).

Use of Commission Powers and Resources

- 6 You must not misuse Commission powers or resources³ whether for personal gain, for political purposes or otherwise. Use of any Commission powers or resources must be in line with the Commission's rules on their usage.

Use and Disclosure of Information

- 7 You must not misuse information gained in the course of your work at the Commission for personal gain or for political purposes.
- 8 You must have regard to Sections 23 and 24 of the Criminal Appeal Act 1995 (Annex Two; Annex Three). The duties imposed by those sections continue to apply after you have left the Commission.
- 9 Similarly, you must have regard to the provisions of the Data Protection Act 1998.
- 10 You must not disclose without authority any information which is confidential in nature or which is provided to you in confidence. This duty also continues to apply after you have left the Commission. For these purposes, all information which is provided to you in the performance of your duties should be presumed to have been provided to you in confidence.

Political Activity of Board Members

- 11 In your public role, board members should be, and be seen to be, politically impartial. Board members should not occupy a paid party political post or hold a particularly sensitive or high-profile role in a political party. Board members should abstain from all controversial political activity and comply with Cabinet Office rules on attendance at Party Conferences. On matters directly related to the work of the Commission, board members should not make party political statements or engage in any other political activity.

² This should be taken to include all forms of receipts from fees, charges and other sources

³ This includes facilities, equipment, stationery, telephony, IT and other services

- 12 Subject to the above, board members may engage in political activity but should, at all times, remain conscious of their responsibilities as board members and exercise proper discretion. Board members should inform the Chair and/or the Ministry of Justice before undertaking any significant political activity.

Employment and Appointments

- 13 If a board member wishes to take up new employment or appointments during his/her term of office, you must inform the Chair and ensure that you act in accordance with the Commission's policies as regards other employment or appointments within the Criminal Justice System.
- 14 If an employee wishes to take up additional employment during their employment, you must receive written consent from the Commission. You should refer to your contract of employment and the Commission's policies.

SECTION 4: CONFLICTS OF INTEREST

- 15 You must ensure that no conflict arises, or could reasonably be perceived to arise, between your public duties and your private interests, financial or otherwise. You must also ensure that no conflict of interest and/or bias (actual or perceived) arises or could reasonably be perceived to arise, in your conduct of casework or casework decision-making.
- 16 You must comply with the rules of the Commission on handling conflicts of interests set out in Annexes Four and Five. These require you to declare publicly any private interests which may, or may be perceived to, conflict with your public duties⁴. The rules also require you to remove yourself from the discussion or determination of matters in which you have a financial interest. In matters in which board members and employees have a non-financial interest, you should not participate in the discussion or determination of a matter where the interest might suggest a danger of bias.⁵
- 17 Board members must ensure that their entry in the Commission's register of board members' interests is accurate and up-to-date.

SECTION 5: RESPONSIBILITIES

- 18 You should work to the highest personal and professional standards and play a full and active role in the work of the Commission. You should at all times act in good faith, responsibly and in the best interests of the Commission.
- 19 You should deal with the public and their affairs fairly, efficiently, promptly, effectively and sensitively, to the best of your ability. You must not act in a way that unjustifiably favours or discriminates against particular individuals or interests.
- 20 You must comply with the statutory and administrative requirements relating to your post.

⁴ In general, all financial interests should be declared. When considering what non-financial interests should be declared, you should ask yourself whether a member of the public, acting reasonably, would consider that the interest in question might influence your words, actions or decisions.

⁵ These are common law provisions.

- 21 You must not use, or attempt to use, your role at the Commission to promote your personal interests or those of any connected person, firm, business or other organisation.
- 22 In respect of board members, you should respect the principle of collective decision-making and corporate responsibility. This means that, once the board has made a decision, you should support that decision.
- 23 Communications between the Commission and officials or ministers at the Ministry of Justice will normally be through the Chair or the Chief Executive. Before a board member makes an individual approach to such an official or minister, you should normally seek the agreement of the rest of the board.

SECTION 6: COLLEAGUES

- 24 You will treat colleagues with courtesy and respect and you should not ask or encourage a colleague to act in any way which would conflict with this Code.

SECTION 7: PERSONAL LIABILITY OF BOARD MEMBERS

- 25 As set out in Annex 5.4 of Managing Public Money at <https://www.gov.uk/government/publications/managing-public-money> the Government has indicated that an individual board member who acts honestly and in good faith will not have to meet out of his or her personal resources any personal civil liability which is incurred in the execution or the purported execution of his or her Board functions, save where the Board member has acted recklessly.
- 26 Annex 5.4 provides this indemnity to board members, subject to the provisions of the Criminal Appeal Act 1995, and obviates the need for the Commission to issue individual indemnities to board members. Board members who need further advice should consult the Commission's legal adviser.
- 27 Legal proceedings initiated by a third party are likely to be brought against the Commission. In exceptional cases, proceedings (civil or, in certain circumstances, criminal) may be brought against the Chair or other individual board members. For example, a board member may be personally liable if he or she makes a fraudulent or negligent statement which results in loss to a third party. Board members who misuse information gained by virtue of their position may be liable for breach of confidence under common law, or may commit a criminal offence.

SECTION 8: CONCERNS ABOUT IMPROPER CONDUCT

28 If you believe that you are being required to act in a way which:

- is illegal, improper, or unethical;
- is in breach of a professional code;
- may involve possible maladministration, fraud or misuse of public funds;
- is otherwise inconsistent with this Code;

you should either raise the matter, in the first instance, with your manager, senior management team, the Chief Executive, the Chair or with the Commission's Whistleblowing Champion as appropriate. Further advice on this matter is in the Commission's Whistleblowing policy.

29 In certain circumstances, solicitor and barrister staff members and solicitor and barrister Commissioners may be under a professional obligation to report to their respective professional bodies, misconduct by other solicitors or barristers. The Commission will not interfere with these professional obligations. However, in keeping with the Commission's policies, no staff member or Commissioner (whether or not he or she is a lawyer) may release any case papers or material without the Commission's express consent.

ANNEX ONE

RULES AS REGARDS THE REPORTING OF GIFTS AND HOSPITALITY

1. Board members and employees must not accept any gifts or hospitality which might, or might reasonably be perceived to, compromise their personal judgement or integrity or place them under an improper obligation.
2. Offers of gifts/hospitality or services should be reported to the Chief Executive (or, in the case of the CEO, to the Chair), and recorded in a register maintained for that purpose.
3. The register will include: the name of the board member or employee receiving the offer or invitation, details of the gift/hospitality, its originator, the estimated value, whether the offer was accepted or not and, for gifts accepted, its ultimate disposition. The register will be open for public inspection upon request.
4. Board members and employees must never canvass or seek gifts or hospitality.
5. Gifts and hospitality may be accepted only in the circumstances set out below, and will need to be reported and recorded in the register:
 - Isolated gifts of a trivial character, or inexpensive seasonal gifts such as calendars;
 - Conventional hospitality, provided that it is reasonable in the circumstances.
6. Board members and employees are responsible for their decisions on the acceptance of gifts or hospitality and for ensuring that any gifts or hospitality accepted can stand up to public scrutiny and do not bring the Commission into disrepute.
7. What is normal and reasonable will largely depend on the extent to which a board member or employee is personally involved. For example, there is no objection to the acceptance of an invitation to the annual dinner of an organisation with which the Commission has regular contact, or to working lunches in the course of official visits or business relationships, but any hospitality which is accepted must not be frequent, or lavish. At all times, board members and employees must not give or accept gifts or hospitality in return for, or in anticipation of, any action.

ANNEX TWO

THE CRIMINAL APPEAL ACT 1995

Section 23 Offence of disclosure

- (1) A person who is or has been a member or employee of the Commission shall not disclose any information obtained by the Commission in the exercise of any of their functions unless the disclosure of the information is excepted from this section by section 24.
- (2) A person who is or has been an investigating officer shall not disclose any information obtained by him in his inquiries unless the disclosure of the information is excepted from this section by section 24.
- (3) A member of the Commission shall not authorise—
 - (a) the disclosure by an employee of the Commission of any information obtained by the Commission in the exercise of any of their functions, or
 - (b) the disclosure by an investigating officer of any information obtained by him in his inquiries,unless the authorisation of the disclosure of the information is excepted from this section by section 24.
- (4) A person who contravenes this section is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

Section 24 Exceptions from obligations of non-disclosure

- (1) The disclosure of information, or the authorisation of the disclosure of information, is excepted from section 23 by this section if the information is disclosed, or is authorised to be disclosed—
 - (a) for the purposes of any criminal, disciplinary or civil proceedings,
 - (b) in order to assist in dealing with an application made to the Secretary of State for compensation for a miscarriage of justice,
 - (c) by a person who is a member or an employee of the Commission either to another person who is a member or an employee of the Commission or to an investigating officer,
 - (d) by an investigating officer to a member or an employee of the Commission,
 - (e) in any statement or report required by this Act,
 - (f) in or in connection with the exercise of any function under this Act, or
 - (g) in any circumstances in which the disclosure of information is permitted by an order made by the Secretary of State.

- (2) The disclosure of information is also excepted from section 23 by this section if the information is disclosed by an employee of the Commission, or an investigating officer, who is authorised to disclose the information by a member of the Commission.
- (3) The disclosure of information, or the authorisation of the disclosure of information, is also excepted from section 23 by this section if the information is disclosed, or is authorised to be disclosed, for the purposes of—
 - (a) the investigation of an offence, or
 - (b) deciding whether to prosecute a person for an offence,unless the disclosure is or would be prevented by an obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) arising otherwise than under that section.
- (4) Where the disclosure of information is excepted from section 23 by subsection (1) or (2), the disclosure of the information is not prevented by any obligation of secrecy or other limitation on disclosure (including any such obligation or limitation imposed by or by virtue of an enactment) arising otherwise than under that section.
- (5) The power to make an order under subsection (1)(g) is exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 25 Consent to disclosure

- (1) Where a person on whom a requirement is imposed under section 17 notifies the Commission that any information contained in any document or other material to which the requirement relates is not to be disclosed by the Commission without his prior consent, the Commission shall not disclose that information without such consent.
- (2) Such consent may not be withheld unless—
 - (a) (apart from section 17) the person would have been prevented by any obligation of secrecy or other limitation on disclosure from disclosing the information to the Commission, and
 - (b) it is reasonable for the person to withhold his consent to disclosure of the information by the Commission.
- (3) An obligation of secrecy or other limitation on disclosure which applies to a person only where disclosure is not authorised by another person shall not be taken for the purposes of subsection (2)(a) to prevent the disclosure by the person of information to the Commission unless—
 - (a) reasonable steps have been taken to obtain the authorisation of the other person, or
 - (b) such authorisation could not reasonably be expected to be obtained.

ANNEX THREE

DISCLOSURE OF INFORMATION

1. Board members and employees owe a general duty of confidentiality to the Commission at common law. They are therefore required to protect official information held in confidence. Nothing in this Code should be taken as overriding existing statutory or common law obligations to keep confidential, or in appropriate cases to disclose, certain information.
2. It is the Commission's policy to be open with those who have a legitimate interest in the operation of the Commission and the Commission's role. The Commission publishes information about its work in its Annual Report & Accounts. Clarification of Commission policy is provided upon request by the Commission's legal adviser.
3. Agendas, minutes and other papers produced in connection with meetings of the Commission's board and its Committees should be treated as private and confidential unless the Commission directs otherwise. The release of information from Commission papers, and the terms of the release are matters for the Commission to determine.
4. Board members and employees have a responsibility to ensure that all Commission documents and information sent to them, whether at the office or at home, in whatever format, be kept safe and that the relevant security classification is observed.

Casework disclosure

5. There are strict statutory controls on disclosure by the Commission, which are set out in sections 23-25 of the Criminal Appeal Act 1995 (see Annex Two of this Code).
6. Board members and employees have a responsibility to ensure that they comply with the statute and with the Commission's policy on disclosure as set out in the Formal Memorandum on Disclosure.

ANNEX FOUR

RULES AS REGARDS THE REPORTING OF FINANCIAL AND OTHER INTERESTS

1 Board members are required to provide details of relevant financial interests. The details will be continuously updated in a Register of Interests. The categories to be declared are:

- Directorships (whether remunerated directly or indirectly);
- Remunerated employment, office or profession, including membership of Lloyds
- Shareholdings: interests in shareholdings held by the board member, either personally, or with or on behalf of the member's spouse or dependent children, in any public or private company or other body which are:
 - greater than 1% of the issued share capital of the company or body; or
 - less than 1% of the issued share capital but more than £25,000 in nominal value.

The nature of the company's business should be registered in each case.

2 Board members are required to provide details of any non-pecuniary interests that relate closely to the Commission's activities. This should include, for example, membership of civil rights groups such as Liberty and Justice, membership of the Law Society or a local law society, or an organisation associated primarily with the criminal justice system or a component part of the system. The details will be updated continuously and published in a Register of Interests maintained by the Chief Executive.

ANNEX FIVE

RULES AS REGARDS THE HANDLING OF POSSIBLE CONFLICTS OF INTEREST

Conflicts of Interest - generally

- 1 Board members and employees should declare personal or business interests whenever they conflict, or where they might be seen as conflicting, with their responsibilities as staff members. They should not misuse their official position, or information acquired in the performance of their official duties, to further their private interests or those of others.
- 2 If a board member or employee involved in the Commission's contractual arrangements has any financial or other interest, direct or indirect, in a company or firm being considered by the Commission for a contract, he/she should disclose the nature of his/her interest in accordance with the rules set out in Annex Four. For example, disclosure would be appropriate if the Commission were considering whether or not to award a contract to a company or firm in which the board member's or employee's relative or spouse has a financial or other interest. Board members and employees are responsible for ensuring that any possible conflicts of interest are identified at an early stage, and that appropriate action is taken to resolve them.

Board Members

- 3 Board members have a personal duty to raise issues concerning conflicts arising in corporate business either at, or preferably before, any relevant meeting. Declaration of any such conflicts will be a standing agenda item for all Board and Committee meetings. The Chief Executive will record instances of conflict in a register kept for the purpose.
- 4 A Commission board member who is directly or indirectly interested in a contract made, or proposed to be made, by the Commission should make timely disclosure of the nature of his/her interest; such disclosure shall be recorded in any relevant minutes and in the register of such conflicts. The member shall not take part in any deliberation or decision of the Commission with respect to that contract.
- 5 Notice given at a meeting of the Commission by a board member to the effect that he/she is a member of a specified company or firm and is to be regarded as interested in any contract which may, after the date of notice, be made with the company or firm shall be regarded as a sufficient disclosure of his/her interest in relation to any contract so made.
- 6 A board member need not attend in person at a meeting of the Commission in order to make any disclosure which he/she is required to make under these rules if he/she takes reasonable steps to secure that the disclosure is made by a notice which is brought up and read out at the meeting.

Employees

- 7 Employees have a duty to raise issues concerning conflicts arising in corporate business. Employees should report any such conflicts to the Human Resources Manager, who will record them in the register of such conflicts.

- 8 The employee shall not take part in any deliberation or decision of the Commission with respect to any matter in relation to which he or she may have a conflict of interest.

Conflicts of interest and/or bias (actual or perceived) – casework-related

- 9 Should a conflict arise in relation to any application to the Commission, the board member or employee should raise the concern immediately it is identified. The Director of Casework Operations will record instances of conflict in an internal register kept for the purpose.
- 10 In casework matters it is not always possible to identify all potential conflicts when an application is first received. Whenever a board member or employee identifies a potential conflict at any stage of a case in which he or she may be involved, he or she should declare the potential conflict to the Director of Casework Operations. The declaration of potential conflict will be recorded in an internal register kept for the purpose.
- 11 Save as is required by the Commission’s policies as regards other employment or appointments within the Criminal Justice System, board members or employees are not prohibited from undertaking legal work in their private capacity during their time at the Commission. However, they should not accept instructions to advise or represent parties involved in any proceedings against the Commission or in the outcome of which the Commission might reasonably be thought to have a material interest. Should they find themselves in such a position, they should withdraw from the case. This also applies to any board member or employee who is instructed or approached to advise in relation to a case submitted, or likely to be submitted, to the Commission for review.

Commissioners

- 12 In respect of Commissioners, the Commission’s founding legislation requires that “at least one third of the members of the Commission shall be persons who are legally qualified” and that “at least two thirds of the members of the Commission shall be persons who appear to ... have knowledge or experience of any aspect of the criminal justice system”. Having such experience within the Commission means that there may be times when a potential conflict of interest may arise and/or an issue in respect of bias (actual or perceived) may be suggested, regarding the decision-making of Commissioners during the Commission’s review of cases. Such tensions could arise in relation to, for example, a Commissioner’s past involvement in a particular case or organisation or a personal contact or from involvement in current cases at the Commission.
- 13 In keeping with the Seven Principles of Public Life⁶ and the Code of Conduct for Board Members of Public Bodies⁷ the identification of issues of conflict or bias is in the first instance for the individual concerned; and it is for that individual to resolve, usually by recusing him or herself from the case or cases.
- 14 Where there is disagreement as to the existence of a potential conflict of interest and/or regarding the suggestion of bias (actual or perceived); it is otherwise unclear whether or not conflict and/or bias arises; or it is unclear what course of

⁶ *Standards in Public Life: First Report of the Committee on Standards in Public Life*. Volume 1: Report. CM 2850-I (set out in Section 2 of this Code).

⁷ Cabinet Office, June 2011 (on which this Code is based).

action should be taken, the matter should be referred to the Chair for decision. If there is no satisfactory resolution at that stage, the Chair will refer the matter to a group comprising the Chair, the Chief Executive, a Commissioner and a non-executive director. The Chair will then make the final decision taking into account all of the views of the members of that group. If the question relates to the Chair personally, the reference should be to a group comprising all Non-Executive Directors, the Chief Executive and a Commissioner.

- 15 Any such meetings shall be minuted and any advice relied on recorded in writing.

Employees

- 16 In respect of employees, in the event that it is unclear whether or not a conflict or bias arises in casework, or what course of action should be taken once identified, the matter should be referred to the Chief Executive, whose decision, in consultation with the Director of Casework Operations (unless the conflict or bias concerns the Director), will be taken as final. If the question should relate to the Chief Executive, the reference should be to the Chair.

